

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0881, Luc Jean LaCasse v. New Hampshire Department of Transportation, the court on November 29, 2005, issued the following order:

The plaintiff, Luc Jean LaCasse, appeals an order of the trial court granting summary judgment to the defendant, the New Hampshire Department of Transportation (DOT). He contends that the trial court misconstrued RSA 230:80. We affirm.

In reviewing the trial court's grant of summary judgment, we consider the affidavits and all inferences properly drawn from them, in the light most favorable to the non-moving party. Marikar v. Peerless Ins. Co., 151 N.H. 395, 397 (2004). If there is no genuine issue of material fact, and if the moving party is entitled to judgment as a matter of law, the grant of summary judgment is proper. *Id.* We review the trial court's application of the law to the facts *de novo*. *Id.*

RSA 230:80, I (1993) provides that DOT shall not be held liable in an action to recover for injuries arising out of its maintenance of public highways unless the injury was caused by an insufficiency. A highway is considered insufficient only if it is not passable in any safe manner by those persons or vehicles permitted thereon or there exists a safety hazard that is not reasonably discoverable or avoidable by a person who is traveling thereon in a manner that is reasonable and prudent as determined by the condition and state of repair of the highway. RSA 230:78, II (1993). The plaintiff argues that in this case the road was insufficient because a safety hazard existed that was not reasonably avoidable by a person traveling on the road in a reasonable and prudent manner. He contends that the trial court erred when it concluded that because the road was safely passable by motorists, it was not insufficient; rather than determining whether the road was passable by some travelers, he argues that the court should have analyzed whether the road posed a danger to the particular user.

According to his affidavit, the plaintiff was injured after he completed several miles of in-line skating when he skated into his driveway and flipped over backward after hitting a drainage ditch at the bottom of his driveway. His affidavit indicates that he was aware of the ditch. Even if we assume that the ditch constituted a safety hazard, the plaintiff offered no evidence that the ditch was unavoidable while he traveled on the road in a prudent and reasonable manner as determined by the condition and state of repair of the road. See RSA 230:78, II (b). Our conclusion that the trial court's entry of summary judgment

was correct is supported by the language of RSA 230:78, III, in which the legislature stated that, in the absence of impassability or a hidden hazard, a road shall not be considered insufficient merely because DOT fails to maintain or repair it to the same standard as some other road or to a level of service commensurate with its current level of public use.

Affirmed.

NADEAU, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox,
Clerk**